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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

1. Whether the successor trial judge erred in his application of the 13th juror rule to grant new trials based upon a determination that he could not act as 13th juror when the original trial judge resigned as judge and pled guilty to official misconduct prior to hearing the defendants' motions for new trials.
2. Whether the trial court erred in granting new trials based upon a finding of structural error.
3. Whether an extraordinary appeal should be granted.
4. Whether the State's request to stay these proceedings should be granted.

INTRODUCTION

The State of Tennessee has filed an application for an extraordinary appeal, pursuant to Tenn.R. App. P. 10 from the Honorable Jon Kerry Blackwood's order of December 6, 2011. (St. Add. 18). Judge Blackwood granted new trials to Letalvis Cobbins, Lemaricus Davidson, George Thomas, and Vanessa Coleman based on the thirteenth-juror rule, and a finding of "structural error" based upon proof of misconduct by the presiding trial judge, former Judge Richard Baumgartner. The State is not contesting the grant of a new trial in the Vanessa Coleman case.

An Application for Interlocutory Appeal under Tenn.R.App.P. 9 was denied by Judge Blackwood on January 17, 2012. (St. Add.19). The State of Tennessee filed its Tenn.R.App.P.10 Application on March 2, 2012. (St. Add. 23). The Court of Criminal Appeals denied that Application by Order dated April 13, 2012. (St. Add. 25).

. The State of Tennessee filed this Application on May 9, 2012.

The State of Tennessee has filed Addendums (1-32).

The State of Tennessee argues the trial court exceeded its authority by applying the thirteenth-juror rule to grant new trials, claiming former Judge Baumgartner had already approved the respective jury verdicts. Secondly, the State of Tennessee argues that Judge Blackwood applied the wrong standard in evaluating the defendants' claims that they were deprived of due process of law. Mr. Cobbins respectfully requests that this Court deny the Application by the State of Tennessee.

STANDARD OF REVIEW

Tenn.R.App.P.10 (a) provides for an application for extraordinary appeal from an interlocutory order of a lower court:

- (1) If the lower court has so far departed from the accepted and usual course of judicial proceedings as to require immediate review, or
- (2) If necessary for complete determination of the action on appeal as otherwise provided by these rules.

The circumstances in which review is available under this rule, however, are very narrowly circumscribed to those situations in which the trial court or the intermediate appellate court has acted in an arbitrary fashion, or as may be necessary to permit complete appellate review on a later appeal. *See Advisory Commission Comment, 2005.*

An extraordinary appeal is proper if the prerequisites of common law certiorari exist. *State v. Willoughby*, 594 S.W.2d 388 (1980), recognized the following considerations:

- a. The ruling of the court below represents a fundamental illegality.
- b. The ruling constitutes a failure to proceed according to the essential requirements of the law.
- c. The ruling is tantamount to the denial of either party of a day in court.
- d. The action of the trial judge was without legal authority.
- e. The action of the trial judge constituted a plain and palpable abuse of discretion.
- f. Either party has lost a right or interest that may never be recaptured.

STATEMENT OF THE CASE AND FACTS

Mr. Cobbins was originally charged in a 46 count Indictment with the murders of Ms. Channon Christian and Mr. Christopher Newsom from events occurring in January of 2007. In late 2007, the State of Tennessee filed a Notice to Seek the Death Penalty in Mr. Cobbins case. Several months later, the State filed notices as to the other defendants. Mr. Cobbins case was tried first in August of 2009. Mr. Cobbins was convicted of the first degree murder of Ms. Channon Christian. The jury declined to impose the death penalty and Mr. Cobbins was ultimately sentenced to life without the possibility of parole plus one hundred years. Mr. Davidson was tried in October of 2009, and received a death sentence. Mr. Thomas was tried in December of 2009, and received two sentences of life without parole. Ms. Coleman was not tried until May of 2010. She was convicted of facilitation of first degree murder and received a 53 year sentence.

On February 2, 2011, former trial judge, Richard Baumgartner, took a medical leave of absence. He was charged with official misconduct to which he entered a guilty plea on March 10, 2011. Baumgartner resigned from the bench on this date. On May 15, 2012, Baumgartner was charged in federal court with 7 counts of misprision of a felony for conduct which occurred while these cases were pending. This federal case is scheduled for trial in July of 2012.

Although all of the defendants had been sentenced by Baumgartner, none of the timely filed motions for new trial had been heard prior to Baumgartner's removal from the bench.

These cases were reassigned to Senior Judge Jon Kerry Blackwood. Mr. Cobbins was first in order to be heard on the pending motions for new trials. On June 9, 2011, Cobbins' motion for new trial was heard in part (St. Add. 5).. Cobbins amended his motion for new trial to include

error based upon the competency of the former trial judge.

Judge Blackwood had signed search warrants and authorizations in the state case against Baumgartner and was aware of matters which needed to be disclosed to the defense in order to raise this remaining issue. Judge Blackwood ordered that the Tennessee Bureau of Investigation file be filed under seal so that *Brady* material could be disclosed to the defense. Judge Blackwood ordered counsel for the remaining defendants to file any amendments to their respective motions for new trials as to the competency/misconduct of Baumgartner. Following an opportunity to review the T.B.I. investigative file, all defendants filed motions raising the structural error issue. (St. Add. 6,7,8,9,10).

A hearing was conducted on December 1, 2011, where a stipulation by the parties was entered.(St. Add. 14) This stipulation concerned the admissibility of portions of the T.B.I. file. During their investigation of Baumgartner, the T.B.I. conducted interviews with numerous individuals and gathered various documents, including telephone, medical, and pharmacy records. No witnesses were called by either party.

The stipulated proof showed that Baumgartner was addicted to narcotics as early as 2008 and was advised by his physician to leave the bench. He remained on the bench until January of 2011.

Baumgartner began an improper association with Deena Castleman, who had previously been a defendant in his Drug Court Program. This association began in 2008, prior to Mr. Cobbins' trial in August of 2009. Ms. Castleman procured narcotics for Baumgartner and introduced him to her associates who also began obtaining narcotics for Baumgartner. One of her associates was Chris Gibson. Gibson was serving a sentence of probation originating in Baumgartner's court.

Gibson began supplying Baumgartner with large amounts of narcotics. (St. Add. 17)

As Baumgartner's list of associates grew, his addiction issues manifested in increasingly erratic behavior ,unethical conduct, and criminal behavior.

According to stipulated testimony, Baumgartner would leave during breaks in trials to meet Castleman or Gibson to buy pills and would accept delivery of pills by Castleman to his chambers.

Baumgartner attempted to intervene and assist his primary supplier, Deena Castleman, in various ways. He is now charged in federal court for his criminal conduct taken to benefit Castleman and ensure his continuing supply of narcotics. (Cobbins Exhibit 1).

Prescription records indicate that Baumgartner was using narcotics obtained from various legal and illegal sources throughout the pendency of these proceedings. (St. Add. 17).

ARGUMENT

The Successor Judge Properly Analyzed And Applied The Law To Grant New Trials Upon A Determination That He Could Not Act As 13th Juror When The Original Trial Judge Resigned And Pled Guilty To Official Misconduct Prior To Hearing The Defendants' Motions For New Trials.

The State of Tennessee alleges Judge Blackwood failed to properly analyze and apply the thirteenth-juror rule based upon their allegation that former Judge Baumgartner “expressed clear approval of each jury’s verdict, thereby sufficiently satisfying his thirteenth-juror obligation and, if he failed in satisfying his duty, successor judge, Judge Blackwood, could act as thirteenth juror.

I. Former Judge Baumgartner Could Not and Did Not satisfy the Thirteenth-Juror Rule With His Approval of the Juries’ Verdicts at the Defendants’ Sentencing Hearings.

Under Tenn.R.Crim.P.33 (d) “the trial court may grant a new trial following a verdict of guilty if it disagrees with the jury about the weight of the evidence”.

The State of Tennessee argues the numerous statements by former Judge Baumgartner at lengthy sentencing hearings demonstrate his “clear approval” and satisfaction with the respective jury verdicts.

This argument might prevail under different circumstances. In these cases, the trial judge was engaging in criminal conduct and providing rulings while under the influence of narcotics. This conduct occurred from the time of arraignment throughout all motion hearings, at trial, and at sentencing. There was never a time that the proceedings in this case were not “tainted” by judicial corruption, misconduct, and the use and/or abuse of drugs.

To rule contrary to the State’s position at the time of any of these sentencing hearings would

have subjected former Judge Baumgartner to intense scrutiny by the very entity that is charged with the responsibility of administering justice and bringing charges against those in violation of the criminal laws of the state of Tennessee. Clearly former Judge Baumgartner was breaking the law at this time and was obviously aware of the prosecutors' duties.

Judge Blackwood recognized this fact when he reversed prior statements accepting the verdict in Mr. Cobbins' case. Mr. Cobbins Motion For New Trial was heard, in part, on June 6, 2011. On that date, Judge Blackwood initially determined that he could act as thirteenth-juror. On this same date, it was determined that Mr. Cobbins intended to raise the issue of former Judge Baumgartner's judicial misconduct/ competence. Only then did Judge Blackwood order the T.B.I. investigative file be released to counsels for review. Judge Blackwood had not seen the T.B.I. file at this time and was unaware of the true extent of former Judge Baumgartner's judicial misconduct, corruption, and addiction issues. He, however, knew enough to determine that the T.B.I. investigative file contained information that should be disclosed to the defense.

After obtaining and reviewing the entire T.B.I. investigative file, on December 1, 2011, Judge Blackwood granted each defendant a new trial on the thirteenth-juror issue based upon both witness credibility and the credibility of former Judge Baumgartner. (St. Add. 17, 18) Mr. Cobbins, who was the only defendant who had been heard prior to this time was placed in the same position as the other three defendants.

Judge Blackwood candidly admitted his thoughts when first assigned this case.

He stated: ".....My first inclination when the Supreme Court called me and said, you got to do this, you got to take over this thing and handle this thing, first inclination came to me was, oh, what about those verdicts, and I got to do everything in my power to save those verdicts. I just got to. Got to. (State's Addendum No. 14, p.86-87).

Under Tenn.R.Crim.P.25 (b)(2), “the successor judge may grant a new trial when that judge concludes that he or she cannot perform those duties because of the failure to preside at the trial and for any other reason”. (emphasis added).

At the December 1, 2011, hearing, the “structural error” arguments had been made and were an additional and independent basis for granting all four defendants a new trial.

It is clear from Judge Blackwood’s comments on December 1, 2011, that he tried, but simply could not act as thirteenth-juror in any of these four cases. He stated:

And as I—I think it’s with that in mind that I ruled in the Cobbins case that as the thirteenth-juror I could rule. But it was only after the Cobbins case that we begin to read the entire T.B.I. file. Up until that point we had snippets. We had what they reported to me. I knew there was going to be a problem, but boy, when that T.B.I. file hit us, I realized that the responsibility was to this judicial system, and to the duties that are incumbent upon the judge, and there is no way this Court can rule as a 13th juror with regard to any of these verdicts. Not only is there—there may be credibility issues, they’re credibility issues with this—with Judge Baumgartner. (State’s Addendum No. 14 p.86-87).

Judge Blackwood did not “so far depart from the accepted and usual course of judicial proceedings as to require immediate review.

In conclusion, Mr. Cobbins had the misfortune of being heard “piece-meal” and first in time at a time when the facts surrounding former Judge Baumgartner’s situation were not yet an issue and certainly not adequately developed.

On June 6, 2011, there had been no disclosure of any Brady material, such as information contained in the T.B.I. investigative file, by the State of Tennessee.

The State of Tennessee seeks now to distinguish Mr. Cobbins’ situation from that of Mr. Davidson and Mr. Thomas. Had the State of Tennessee discharged its duties under Brady, Mr. Cobbins Motion For New Trial would not have been heard, in part, on the June date and he

would have been in the same posture as the other defendants. It is clear that Judge Blackwood struggled with his conclusions of June 6, 2011, and had the courage to correct what he deemed to be a mistake after considering all of the facts. Judge Blackwood felt a duty to do so and set forth in detail his findings of fact and conclusions of law.

Following arguments on December 1, 2011, and after having read the T.B.I. file in its entirety, Judge Blackwood determined that the position taken on June 6, 2011, could not stand. Judge Blackwood ruled that he could not discharge his duty under the thirteenth-juror rule based upon both witness credibility and the credibility of former Judge Baumgartner.

The purpose of the 13th juror rule is to prevent a miscarriage of justice. *State v. Moats*, 906 S.W. 2d. 431, 434-435 (Tenn. 1995) (citing *State v. Johnson*, 692 S.W. 2d 412, 415 (Tenn. 1885)

Judicial review as 13th juror is a prerequisite to the entry of a valid judgment.

In the event that the trial judge is unable to continue after a verdict of guilty due to absence, death, sickness, or other disability a successor judge may complete the duties of the court. **Tenn.**

R. Crim. Pro. 25. When the successor judge cannot perform the duties as a result of not having presided over the trial, or for any other reason, the successor judge may grant a new trial. *Id.*

Where the trial court has failed to perform as 13th juror or performed improperly a new trial is required. *State v. Dankworth*, 919 S.W. 2d 52 (Tenn. Crim. App. 1995).

Assuming Baumgartner acted as 13th juror in Mr. Cobbins' case, under these circumstances, it is evident that he would have performed "improperly". Because of his impairment by narcotics and his continuing criminal activity, he would have been unable to act as 13th juror at the time of sentencing.

The trial court record will reflect that approximately 175 motions were filed and ruled upon by Baumgartner. The fact remains that Baumgartner was an addict who was impaired at the time he ruled upon pre-trial motions concerning critical evidentiary issues as well as motions pertaining to jury selection and motions during the trial. The successor judge was forced to rely on a tainted record. As such, he could not perform his duties as 13th juror. Judge Blackwood simply recognized Baumgartner's addiction issues impacted the record as a whole and exercised his discretion to grant new trials as the only constitutionally sound alternative.

Judge Blackwood did not depart from the accepted and usual course of judicial proceedings as argued by the State of Tennessee.

The Trial Judge Correctly Analyzed And Applied The Law In Granting New Trials Based Upon A Finding Of Structural Error.

II. The Trial Court Applied the Correct Standard in Evaluating the Defendants' Claims That They were Deprived of Due Process of Law for a Violation of the Right to an Impartial and Mentally Competent Tribunal.

The State of Tennessee argues that Judge Blackwood made no finding that the defendants were actually deprived of the due process right to a mentally competent tribunal during their trial proceedings, and that his findings were “woefully insufficient to establish structural error”.

Additionally, the State argues that Judge Blackwood failed to address whether former Judge Baumgartner was biased or prejudiced when presiding over the defendants’ trials.

The right to a fair trial before an impartial tribunal is a fundamental right and the Due Process Clause requires a ‘fair trial in a fair tribunal’, before a judge with no actual bias against the defendant or interest in the outcome of the particular case. *Bean v. Bailey*, 280 S.W.3d 798, 803 (Tenn. 2009) (quoting *State v. Austin*, 87 S.W.3d 447, 470 (Tenn. 2002), and *State v. Benson*, 973 S.W.2d 202, 205-06. (Tenn. 1998).

The State of Tennessee argues “there is not one iota of proof that Judge Baumgartner acted in any way to curry favor with the State so as to deflect an investigation into his own misconduct”. This Court can simply review the grounds set forth in Mr. Cobbins Motion for New Trial to find rulings to “curry favor” with the State. For example, former Judge Baumgartner denied Mr. Cobbins Motion to Continue his trial based upon the documented and expressed need to finish DNA testing. This testing was of utmost importance to the defense. Some of the items sought to be tested by the defense were later tested by the State of Tennessee prior to Mr. Davidson’s trial. Another example is the denial of Mr. Cobbins Motion For Change of Venue. Mr. Cobbins

sought to be tried in another jurisdiction. The State of Tennessee maintained that venue should remain in Knox County. Had former Judge Baumgartner ruled for the defense on either of these motions, his own conduct could have been subject to intense scrutiny.

In *State v. Smith*, No. 99CR310, slip op. at 17-25 (Tenn. Dec. 19, 2011), the Tennessee Supreme Court discussed, at length, the history of federal and Tennessee judicial misconduct and structural error case law. In *Smith*, it was recognized where judicial misconduct has infected the entirety of a trial, it is impossible to make a quantitative analysis of the facts. “Because bias and impartiality exist in the mind, and often subconsciously....due process does not require a showing of actual, subjective bias or lack of impartiality, which as a practical matter may be impossible to prove”. (Citing *Bracy v. Gramley*, 520 U.S. 899, 904-05 (1997)).

Contrary to the position adopted by the State of Tennessee, there is no requirement that a defendant show a “connection” between the alleged judicial misconduct and his own case. The mere possibility of partiality on the part of a judge constitutes a denial of due process. Judge Blackwood specifically found that former Judge Baumgartner’s “extensive violations of criminal law and judicial ethics rendered the judge legally and ethically incompetent to preside over the trials”. (See Order Granting Defendants’ Motion for New Trial p. 5). (St. Add. 18)

Judge Blackwood’s finding are clearly supported by witness’ statements regarding illicit narcotic purchases as well as pharmaceutical records. Although former Judge Baumgartner appeared to become progressively “worse” over the duration of these trials, the fact remains that he was an admitted “addict” during most or all of the hearings on pretrial motions. Critical rulings regarding the admissibility of evidence were made by an “addict”.

The Constitution requires only a showing that the former judge was abusing narcotics during

the trials. This has been clearly shown.

“A trial is either fair or not. Evidence of judicial corruption requires reversal regardless of the other facts of the particular case. The denial of the petitioners right to an impartial judge is a constitutional error affecting the integrity of the judicial process. A new trial is the only remedy.” *State v. Benson*, 973 S.W.2d 202, 207 (Tenn. 1998) (citing *State v. Bobo*, 814 S.W.2d 353, 357 (Tenn. 1991)).

The right to a fair trial is a fundamental constitutional right. Where there is a defect affecting the entire framework of fairness within which a trial proceeds, then “structural error” is a constitutional error that “deprives defendants of “basic protections” without which a criminal trial cannot reliably serve its function as a vehicle for determination of guilt or innocence” and the criminal punishment may not be regarded as fundamentally fair.” *Nedra v. United States*, 527 U.S. 1,8 (1999) (quoting *Rose v. Clark*, 478 U.S. 570, 577 (1986)).

Once an error is shown to be structural, no showing or analysis of prejudice is conducted; rather, relief is automatically required. See *United States v. Cronic*, 466 U.S. 648, 659 n.25 (1984); *Burdine v. Johnson*, 262 F.3d 536 (5th Cir. 2001).

“The right to an impartial judge is one of the rights that are so basic to a fair trial that their infraction has never been treated as harmless.” *Benson*, 973 S.W. 2d at 207 (citing *Bobo*, 814 S. W. 2d at 357 (Tenn. 1991)).

The appearance of judicial bias or partiality can require a finding of structural error. There must only be a showing that the judge is in a position “which would offer a possible temptation to the average man as a judge to forget the burden of proof required to convict a defendant, or which might lead him not to hold the balance nice, clear, and true between the state and the

accused” such that it “denies the latter due process of law”. *Tumey v. Ohio*, 273 U.S. at 532.

Former Judge Baumgartner’s drug use and criminal conduct undermines the presumption of his integrity as a judge in these cases. “When the trial judge is discovered to have had some basis for rendering a biased judgment, his actual motivations are hidden from review, and we must presume that the process was impaired”. *Vasquez v. Hillery*, 474 U.S. 254, 263 (1986).

Due process implies a tribunal both impartial and mentally competent to afford a hearing. See *Jordan v. Massachusetts*, 225 U.S. 167, 176 (1912).

If it is against the law to drive a vehicle under the influence of marijuana, surely it must be at least equally offensive to allow a judge in a similar condition to preside over a capital trial. *United States v. Microsoft*, 253 F.3d 34, 115 (D.C. Cir. 2001); *Summerlin v. Stewart*, 267 F.3d 926, 950 (9th Cir. 2001).

Thus, Judge Blackwood correctly found structural error that required no specific showing of actual prejudice.

III. An Extraordinary Appeal is Not Warranted.

The State claims the successor judge's action in granting new trials "constitutes a clear and palpable abuse of discretion and amounts to a decision that is both illegal and unjust". The State also argues that it will lose a right or interest that may never be recaptured.

Contrary to the State's contention, there is no evidence in the record that Judge Blackwood acted in an arbitrary fashion in granting new trials or that an extraordinary appeal is necessary to permit complete appellate review on later appeal. A retrial of these cases will create a hardship on all parties; however, it is necessary to obtain a verdict with integrity that will withstand constitutional scrutiny.

The State is concerned with the expense of retrials, and subjecting the victims' families to needless anguish. While these are legitimate concerns, they are present, to some degree, in every case in which review is sought by the State. The State of Tennessee offers plea bargains in a multitude of cases across the state on a daily basis for these very same reasons.

An extraordinary appeal is not warranted.

IV. If this application is granted, Mr. Cobbins agrees that the trial court proceedings should be stayed.

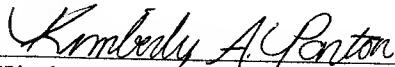
Counsel for Mr. Cobbins can not adequately prepare for a retrial of this case while working on filings and briefs necessary for appellate review of this matter. The prosecuting attorneys in this case are not charged with perfecting this appeal and have not been impeded in their trial preparation. Mr. Cobbins is currently scheduled for trial in August and critical preparation time has been spent reviewing filings and responding to filings by the State of Tennessee.

CONCLUSION

The T.B.I investigative file contains evidence detailing former Judge Baumgartner's addiction, unethical conduct, and criminal conduct. His admitted addiction existed well before these trials and extended throughout the course of pretrial motions, trials, and sentencing hearings. Judge Blackwood made detailed findings of fact supported by the record. The Court of Criminal Appeals has refused to review this matter.

For the reasons stated, the State's Application for Extraordinary Appeal should be denied. If the Application for Extraordinary Appeal is granted, a Motion for Stay should be granted.

Respectfully submitted,


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CERTIFICATE OF SERVICE

I certify that a true and exact copy of the foregoing has been forwarded by first-class U.S. Mail, postage paid, on the 18th day of May, 2012 to: Robert E. Cooper, Jr., Attorney General and Reporter, William E. Young, Solicitor General, John Bledsoe, Sr. Counsel, Criminal Justice Division, P.O. Box 20207 Nashville, Tennessee 37202, David Eldridge and Doug Trant, Attorney at Law, P.O. Box 398, Knoxville, Tennessee, 37901, Tom Dillard and Stephen Johnson, Attorneys at Law, P.O. Box 1126, Knoxville, Tennessee 37901, Leyland Price and Ta Kisha Fitzgerald, Assistant District Attorney Generals, City-County Building, 400 Main Street, Suite 168, Knoxville, Tennessee 37902.

This the 18th day of May, 2012.

Kimberly A. Parton
Kimberly A. Parton

COBBINS----EXHIBIT 1

SEALED

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

FILED

2012 MAY 15 A 11:50

UNITED STATES OF AMERICA)	U.S. DISTRICT COURT
v.)	EASTERN DIST. TENN.
RICHARD R. BAUMGARTNER, also known as (hereinafter "a/k/a"))	DEPT. CL. 71
"JB," a/k/a "Judge B")	Docket No. 3:12-CR- <u>60</u> Judges <u>Phillips Shirley</u>

INDICTMENT

The Grand Jury charges:

Unless otherwise indicated, at all times relevant to this Indictment:

INTRODUCTION

1. The defendant, **RICHARD R. BAUMGARTNER, a/k/a "JB," a/k/a "Judge B,"** was a sitting Criminal Court Judge in Knox County, Tennessee.
2. Deena Castleman, a/k/a Deena Shelek, and others were participants in a conspiracy to obtain and distribute quantities of controlled substances, namely hydrocodone, oxycodone, Percocet, Suboxone, Xanax, and Roxicodone, in and around Knox County, Tennessee, in violation of federal law, about which the defendant, **RICHARD R. BAUMGARTNER, a/k/a "JB," a/k/a "Judge B,"** had actual knowledge.
3. From approximately June 2009 through approximately October 2010, on divers days, Deena Castleman, a/k/a Deena Shelek, had cases pending in Knox County Criminal Court, Anderson County Criminal Court, Knox County General Sessions Court, and Knox County Juvenile Court.

4. From approximately October 17, 2009, through approximately November 9, 2009, Deena Castleman, a/k/a Deena Shelek, was hospitalized as a patient at Mercy Medical Center, also known as Saint Mary's Hospital, in Knoxville, Tennessee. While at the hospital, Deena Castleman, a/k/a Deena Shelek, was found to be illegally in possession of approximately 25 oxycodone tablets.

5. In approximately May 2010, Deena Castleman, a/k/a Deena Shelek, resided in the Transitional Housing Unit of the YWCA in Knoxville, Tennessee, where the possession and use of illegal controlled substances was strictly prohibited.

COUNT ONE

The Grand Jury further charges that in or about June 2009, in the Eastern District of Tennessee, the defendant, **RICHARD R. BAUMGARTNER**, a/k/a "JB," a/k/a "Judge B," having knowledge of the actual commission of a felony cognizable by a court of the United States, to wit, conspiracy to distribute controlled substances, namely hydrocodone, oxycodone, Percocet, Suboxone, Xanax, and Roxicodone, in violation of 21 U.S.C. §§ 846, 841(a)(1), and 841(b)(1)(C), did conceal the same by making material misrepresentations about Deena Castleman, a/k/a Deena Shelek, to a sitting Anderson County Criminal Court Judge, and did not as soon as possible make known the same to some judge or other person in civil or military authority under the United States.

[18 U.S.C. § 4, Misprision of a Felony]

COUNT TWO

The Grand Jury further charges that on or about October 30, 2009, in the Eastern District of Tennessee, the defendant, **RICHARD R. BAUMGARTNER**, a/k/a "JB," a/k/a "Judge B," having knowledge of the actual commission of a felony cognizable by a court of the United

States, to wit, conspiracy to distribute controlled substances, namely hydrocodone, oxycodone, percocet, Suboxone, Xanax, and Roxicodone, in violation of 21 U.S.C. §§ 846, 841(a)(1), and 841(b)(1)(C), did conceal the same by making material misrepresentations about Deena Castleman, a/k/a Deena Shelek, to the staff at Mercy Medical Center, also known as Saint Mary's Hospital, and did not as soon as possible make known the same to some judge or other person in civil or military authority under the United States.

[18 U.S.C. § 4, Misprision of a Felony]

COUNT THREE

The Grand Jury further charges that on or about November 10, 2009, in the Eastern District of Tennessee, the defendant, **RICHARD R. BAUMGARTNER, a/k/a "JB," a/k/a "Judge B,"** having knowledge of the actual commission of a felony cognizable by a court of the United States, to wit, conspiracy to distribute controlled substances, including hydrocodone, oxycodone, Percocet, Suboxone, Xanax, and Roxicodone, in violation of 21 U.S.C. §§ 846, 841(a)(1), and 841(b)(1)(C), did conceal the same by making material misrepresentations about Deena Castleman, a/k/a Deena Shelek, to a sitting Anderson County Criminal Court Judge, and did not as soon as possible make known the same to some judge or other person in civil or military authority under the United States.

[18 U.S.C. § 4, Misprision of a Felony]

COUNT FOUR

The Grand Jury further charges that on or about February 8, 2010, in the Eastern District of Tennessee, the defendant, **RICHARD R. BAUMGARTNER, a/k/a "JB," a/k/a "Judge B,"** having knowledge of the actual commission of a felony cognizable by a court of the United

States, to wit, conspiracy to distribute controlled substances, including hydrocodone, oxycodone, Percocet, Suboxone, Xanax, and Roxicodone, in violation of 21 U.S.C. §§ 846, 841(a)(1), and 841(b)(1)(C), did conceal the same by making material misrepresentations about Deena Castleman, a/k/a Deena Shelek, to a sitting Knox County General Sessions Court Judge, and did not as soon as possible make known the same to some judge or other person in civil or military authority under the United States.

[18 U.S.C. § 4, Misprision of a Felony]

COUNT FIVE

The Grand Jury further charges that in or about May 2010, in the Eastern District of Tennessee, the defendant, **RICHARD R. BAUMGARTNER**, a/k/a “JB,” a/k/a “Judge B,” having knowledge of the actual commission of a felony cognizable by a court of the United States, to wit, conspiracy to distribute controlled substances, including hydrocodone, oxycodone, Percocet, Suboxone, Xanax, and Roxicodone, in violation of 21 U.S.C. §§ 846, 841(a)(1), and 841(b)(1)(C), did conceal the same by making material misrepresentations about Deena Castleman, a/k/a Deena Shelek, to the Transitional Housing Director of the YWCA, and did not as soon as possible make known the same to some judge or other person in civil or military authority under the United States.

[18 U.S.C. § 4, Misprision of a Felony]

COUNT SIX

The Grand Jury further charges that on or about August 27, 2010, in the Eastern District of Tennessee, the defendant, **RICHARD R. BAUMGARTNER**, a/k/a “JB,” a/k/a “Judge B,” having knowledge of the actual commission of a felony cognizable by a court of the United

States, to wit, conspiracy to distribute controlled substances, including hydrocodone, oxycodone, Percocet, Suboxone, Xanax, and Roxicodone, in violation of 21 U.S.C. §§ 846, 841(a)(1), and 841(b)(1)(C), did conceal the same by making material misrepresentations about Deena Castleman, a/k/a Deena Shelek, to a sitting Knox County Juvenile Court Magistrate, and did not as soon as possible make known the same to some judge or other person in civil or military authority under the United States.

[18 U.S.C. § 4, Misprision of a Felony]

COUNT SEVEN

The Grand Jury further charges that in or about October 2010, in the Eastern District of Tennessee, the defendant, **RICHARD R. BAUMGARTNER, a/k/a “JB,” a/k/a “Judge B,”** having knowledge of the actual commission of a felony cognizable by a court of the United States, to wit, conspiracy to distribute controlled substances, including hydrocodone, oxycodone, Percocet, Suboxone, Xanax, and Roxicodone, in violation of 21 U.S.C. §§ 846, 841(a)(1), and 841(b)(1)(C), did conceal the same by making material misrepresentations about Deena Castleman, a/k/a Deena Shelek, to a Knox County Assistant District Attorney General, and did

not as soon as possible make known the same to some judge or other person in civil or military authority under the United States.

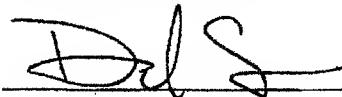
[18 U.S.C. § 4, Misprision of a Felony]

A TRUE BILL:

SIGNATURE REDACTED

FOREPERSON

WILLIAM C. KILLIAN
UNITED STATES ATTORNEY



DAVID P. LEWEN, JR.

ASSISTANT UNITED STATES ATTORNEY



ZACHARY C. BOLITHO
ASSISTANT UNITED STATES ATTORNEY